

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICKY McCLOUD, JR.,

Plaintiff,

v.

SOLANO COUNTY SHERIFF  
DEPARTMENT, et al.,

Defendants.

No. 2:24-cv-00406-EFB (PC)

ORDER

Plaintiff is a county jail inmate proceeding without counsel in an action brought under 42 U.S.C. § 1983. In addition to filing a complaint, plaintiff has filed an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. ECF No. 2.

Leave to Proceed In Forma Pauperis

Plaintiff's application makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

Screening Standards

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.

1 § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion  
2 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which  
3 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such  
4 relief.” *Id.* § 1915A(b).

5 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)  
6 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and  
7 plain statement of the claim showing that the pleader is entitled to relief, in order to give the  
8 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*  
9 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).  
10 While the complaint must comply with the “short and plain statement” requirements of Rule 8,  
11 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556  
12 U.S. 662, 679 (2009).

13 To avoid dismissal for failure to state a claim a complaint must contain more than “naked  
14 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of  
15 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of  
16 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at  
17 678.

18 Furthermore, a claim upon which the court can grant relief must have facial plausibility.  
19 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual  
20 content that allows the court to draw the reasonable inference that the defendant is liable for the  
21 misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a  
22 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*  
23 *Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the  
24 plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

#### 25 Screening Order

26 Plaintiff alleges that, at some point between June 16, 2023 and June 21, 2023, he  
27 contracted salmonella from contaminated food served to him at the Stanton Correctional Facility,  
28 a jail operated by the Solano County Sheriff’s Department. ECF No. 1. He suffered from

1 stomach pain, vomiting, diarrhea, and cold sweats for 14 days. *Id.* On June 26 or 27, 2023, the  
2 Department's spokesperson released a statement that the jail had received contaminated food  
3 from a kitchen operated by defendant Trinity Food Services Group. *Id.* Plaintiff alleges that the  
4 Sheriff's Department and Trinity violated his Eighth Amendment rights.

5 The Eighth Amendment protects prisoners from inhumane methods of punishment and  
6 from inhumane conditions of confinement. *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir.  
7 2006). Extreme deprivations are required to make out a conditions-of-confinement claim, and  
8 only those deprivations denying the minimal civilized measure of life's necessities are  
9 sufficiently grave to form the basis of an Eighth Amendment violation. *Hudson v. McMillian*,  
10 503 U.S. 1, 9 (1992). "Prison officials have a duty to ensure that prisoners are provided adequate  
11 shelter, food, clothing, sanitation, medical care, and personal safety." *Johnson v. Lewis*, 217 F.3d  
12 726, 731-32 (9th Cir. 2000) (quotations and citations omitted).

13 Courts have generally held that a single incident of food poisoning does not rise to the  
14 level of a violation of the Eighth Amendment. *E.g., Green v. Atkinson*, 623 F.3d 278, 280-81 (5th  
15 Cir. 2010). However, "evidence of regular injurious incidents" related to prison food "raises what  
16 otherwise might be merely isolated negligent behavior to the level of a constitutional violation."  
17 *Id.* at 281. *See also George v. King*, 837 F.2d 705, 707 (5th Cir. 1988) ("If prisoners regularly  
18 and frequently suffer from food poisoning with truly serious medical complications as a result of  
19 particular, known unsanitary practices which are customarily followed by the prison food service  
20 organization, and authorities without arguable justification refuse to attempt remedial measures,  
21 the requisite deliberate indifference might well be manifested or inferred.").

22 The facts presented by the complaint in this action present what appears to be a single  
23 incident of food poisoning rather than regular incidents or a custom of unsanitary practices that  
24 officials refuse to remediate. Such facts do not arise to a violation of the Constitution.  
25 Accordingly, the complaint must be dismissed for failure to state a cognizable claim.

26 Leave to Amend

27 Plaintiff's complaint is dismissed with leave to amend. If plaintiff chooses to file an  
28 amended complaint it should observe the following:

Any amended complaint must identify as a defendant only persons who personally participated in a substantial way in depriving him of a federal constitutional right. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a constitutional right if he does an act, participates in another's act or omits to perform an act he is legally required to do that causes the alleged deprivation). The complaint should also describe, in sufficient detail, how each defendant personally violated or participated in the violation of his rights. The court will not infer the existence of allegations that have not been explicitly set forth in the amended complaint.

The amended complaint must contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a).

Plaintiff may not change the nature of this suit by alleging new, unrelated claims. See *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

Any amended complaint must be written or typed so that it so that it is complete in itself without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the earlier filed complaint no longer serves any function in the case. See *Forsyth v. Humana*, 114 F.3d 1467, 1474 (9th Cir. 1997) (the “amended complaint supersedes the original, the latter being treated thereafter as non-existent.”) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967)).

Finally, the court notes that any amended complaint should be as concise as possible in fulfilling the above requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of procedural or factual background which has no bearing on his legal claims.

### Conclusion

Accordingly, IT IS ORDERED that:

1. Plaintiff's application to proceed in forma pauperis (ECF No. 2) is GRANTED;
2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in accordance with the notice to the Solano County Sheriff's Department filed concurrently herewith;

3. Plaintiff's complaint (ECF No. 1) is DISMISSED with leave to amend within 30 days of service of this order; and
4. Failure to comply with this order may result in dismissal of this action for the reasons stated herein.

Dated: November 13, 2024

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE